

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1833 of 1987

Date of decision: 8-10-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K S MEHROTRA

Versus

OIL AND NATURAL GAS COMMISSION

Appearance:

MR YN OZA for Petitioner

MR. AJAY R. MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/97

ORAL JUDGEMENT

The petitioner, Chief Engineer (Electrical) of Oil and Natural Gas Commission by this special civil application filed under Article 226 of the Constitution of India has challenged the legality, validity and correctness of the order dated 13th April, 1986 of the Commission under which, in exercise of the powers conferred under Regulation 25 of the O.N.G.C. (Terms and Conditions of Appointment and Service) Regulations, 1975, he was ordered to be prematurely retired from service of the Commission.

2. Clause (4) of Regulation 25 of the aforesaid Regulation provides that the appointing Authority, if it is of the opinion that it is in the Commission's interest to do so, has the absolute right to retire any employee after he has attained the age of 50 years, by giving him notice of not less than 3 months in writing or three months' pay and allowance in lieu of such notice where it is considered to be in the Commission's interest. The petitioner has come up before this Court with the case that his confidential reports for the five years preceding the date of the impugned order were good or very good. He was not communicated any adverse remarks during the said period, and as such premature retirement is arbitrary and not justified.

3. Reply to the special civil application has been filed by the respondent and it has been stated therein that the Committee comprising of three officers of the Commission, after scrutinising the service record of the petitioner, has opined that it would be in the interest of the Commission to retire the petitioner under the provisions of Regulation 25 of the aforesaid regulation. Overall performance of the petitioner were said to be considered by the Committee. From the reply it further comes out that the Committee while scrutinising the service record of the petitioner found that the petitioner's health for last several years was not good and his performance was ineffective and unequal to the demands of the post. However, in the reply the respondents have to come up with the case that the petitioner has been ever punished or his integrity was doubtful, or he has been communicated with adverse remarks in any of the annual performance report. However, in the reply a picture was sought to be given out that occasionally the petitioner was given warning verbally and in the annual confidential reports, grading for the year 1982-83 and 1983-84, his work was reported

to be below average according to the prevailing instructions and procedure.

4. In view of the aforesaid state of the record of this matter, this court thought it fit to call the proceedings of the screening committee. The counsel for the respondents has produced on the record of this special civil application, xerox copy of the proceedings of the screening committee.

5. The counsel for the respondents admits that in the proceedings aforesaid, 'A' denotes outstanding; B+ denotes extraordinary; 'B' denotes very good; and numericals III, IV and V denote average. From the proceedings of the screening committee I find that the screening committee has scrutinised the service record of the petitioner from the year 1975-76 to 1984-85. From 1975-76 to 1981-82 service record of the petitioner is rated as 'A', 'B+' or 'B'. In the annual confidential report for the year 1982-83, 1983-84 and 1984-85 the grading of the work of the petitioner was average. From the remarks of the screening committee I find that his health was also reported to be not good. However, the counsel for the respondents very fairly conceded that the Medical Board has not been constituted to examine the fitness of the petitioner to continue him in service of the Commission. So there is nothing on the record of the special civil application to show that the Medical Board has opined that the petitioner to be medically unfit for the service of the Commission. Rating of the petitioner for the year 1980-81 was B+. However, for subsequent years it was average. Then how far the screening committee was justified in its opinion for premature retirement of the petitioner is a question which has to be examined. It is not unknown to this court that despite having serious ailments officers continue to work for their employers. Merely because the petitioner at one point of time has gone for long leave because of his poor health, unless the Medical Board otherwise opined, it is not justified to form opinion that the officer is not fit for continuance in the service of the Commission.

6. Taking into consideration the totality of the facts of this case, the petition deserves acceptance and accordingly the same is allowed. The respondent Commission is hereby directed to constitute a fresh screening committee of three officers or of requisite number, other than those officers who were members of the screening committee who opined for premature retirement of the petitioner, and the case of the petitioner be

considered afresh on the basis of the material which was there before the earlier Committee for his premature retirement from the date it has been ordered under the impugned order dated 3rd April, 1986. In case the Screening Committee finds that the petitioner deserved to be continued in service, then he shall be entitled to all consequential benefits. If the Screening Committee finds otherwise, a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post. This exercise shall be completed within six months from the date of receipt of copy of this order. Rule made absolute in the aforesaid terms. No order as to costs. Liberty to revival of this petition in case of difficulty of either of the parties.

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